UNITED
NATIONS

CCPR

International Covenant on
Civil and Political Rights

Distr.
GENERAL

CCPR/C/79/Add.50
7 April 1995

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE
Fifty-third session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Comments of the Human Rights Committee

UNITED STATES OF AMERICA*

1. The Committee considered the initial report of the United States of America (CCPR/C/81/Add.4 and HRI/CORE/1/Add.49) at its 1401st, 1402nd, 1405th and 1406th meetings, on 29 and 31 March 1995 (see CCPR/C/SR.1401, 1402, 1405 and 1406). At its 1413th meeting, on 6 April 1995, the Committee adopted the following comments:

A. Introduction

2. The Committee expresses its appreciation at the high quality of the report submitted by the State party, which was detailed, informative and drafted in accordance with the guidelines. The Committee regrets, however, that, while containing comprehensive information on the laws and regulations giving effect to the rights provided in the Covenant at the federal level, the report contained few references to the implementation of those rights at the state level.

3. The Committee appreciates the participation of a high-level delegation, which included a substantial number of experts in various fields relating to the protection of human rights in the country. The detailed information provided by

* In conformity with the practice of the Committee, Mr. Buergenthal, national of the United States of America, did not take part in the adoption of these comments.

the delegation in its introduction of the report, as well as the comprehensive and well-structured replies provided to questions raised by members, contributed to making the dialogue extremely constructive and fruitful.

4. The Committee notes with appreciation that the Government gave publicity to its report, thus enabling non-governmental organizations to become aware of its contents and to make known their particular concerns. In addition, representatives of a number of those organizations were present during the Committee's examination of the report.

B. Factors and difficulties affecting the implementation of the Covenant

5. The Committee notes that, despite the existence of laws outlawing discrimination, there persist within society discriminatory attitudes and prejudices based on race or gender. Furthermore, the effects of past discriminations in society have not yet been fully eradicated. This makes it difficult to ensure the full enjoyment of the rights provided for under the Covenant to everyone within the State party's jurisdiction. The rise in crime and violence also affects the enjoyment of the rights provided in the Covenant.

6. The Committee also notes that, under the federal system prevailing in the United States of America, the States of the Union retain extensive jurisdiction over the application of criminal and family law in particular. This factor, coupled with the absence of formal mechanisms between the federal and state levels to ensure appropriate implementation of the rights guaranteed by the Covenant by legislative or other measures, may lead to a somewhat unsatisfactory application of the Covenant throughout the country.

C. Positive aspects

7. The Committee recognizes the existence at the federal level of effective protection of human rights available to individuals under the Bill of Rights and federal laws. The Committee notes with satisfaction the rich tradition and the constitutional framework for the protection of human rights and freedoms in the United States.

8. The Committee notes with satisfaction that the United States has recently ratified or acceded to some international human rights instruments, including the Covenant, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination. These ratifications reflect a welcome trend towards acceptance of international scrutiny, supervision and control of the application of universal human rights norms at the domestic level.

9. The Committee welcomes the efforts of the Federal Government to take measures at the legislative, judicial and administrative levels to ensure that the States of the Union provide human rights and fundamental freedoms. It further appreciates the expression of readiness by the Government to take such

further measures as may be necessary to ensure that the States of the Union implement the rights guaranteed by the Covenant.

10. The Committee notes with satisfaction that the first understanding made at the time of ratification in relation to the principle of non-discrimination is construed by the Government as not permitting distinctions that would not be legitimate under the Covenant.

11. The Committee takes note of the position expressed by the delegation that, notwithstanding the non-self-executing declaration of the United States, courts of the United States are not prevented from seeking guidance from the Covenant in interpreting United States law.

12. The Committee further notes with satisfaction the assurances of the Government that its declaration regarding the federal system is not a reservation and is not intended to affect the international obligations of the United States.

D. Principal subjects of concern

13. The Committee has taken note of the concerns addressed by the delegation in writing to its Chairman about the Committee's general comment No. 24(52) on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto (CCPR/C/21/Rev.1/Add.6). Attention is drawn to the observations made by the Chairman of the Committee at the 1406th meeting, on 31 March 1995 (see CCPR/C/SR.1406).

14. The Committee regrets the extent of the State party's reservations, declarations and understandings to the Covenant. It believes that, taken together, they intended to ensure that the United States has accepted what is already the law of the United States. The Committee is also particularly concerned at reservations to article 6, paragraph 5, and article 7 of the Covenant, which it believes to be incompatible with the object and purpose of the Covenant.

15. The Committee regrets that members of the judiciary at the federal, state and local levels have not been made fully aware of the obligations undertaken by the State party under the Covenant, and that judicial continuing education programmes do not include knowledge of the Covenant and discussion of its implementation. Whether or not courts of the United States eventually declare the Covenant to be non-self-executing, information about its provisions should be provided to the judiciary.

16. The Committee is concerned about the excessive number of offences punishable by the death penalty in a number of States, the number of death sentences handed down by courts, and the long stay on death row which, in specific instances, may amount to a breach of article 7 of the Covenant. It deplores the recent expansion of the death penalty under federal law and the re-establishment of the death penalty in certain States. It also deplores provisions in the legislation of a number of States which allow the death penalty to be pronounced for crimes committed by persons under 18 and the actual

instances where such sentences have been pronounced and executed. It also regrets that, in some cases, there appears to have been lack of protection from the death penalty of those mentally retarded.

17. The Committee is concerned at the reportedly large number of persons killed, wounded or subjected to ill-treatment by members of the police force in the purported discharge of their duties. It also regrets the easy availability of firearms to the public and the fact that federal and state legislation is not stringent enough in that connection to secure the protection and enjoyment of the right to life and security of the individual guaranteed under the Covenant.

18. The Committee is concerned that excludable aliens are dealt with by lower standards of due process than other aliens and, in particular, that those who cannot be deported or extradited may be held in detention indefinitely. The situation of a number of asylum-seekers and refugees is also a matter of concern to the Committee.

19. The Committee does not share the view expressed by the Government that the Covenant lacks extraterritorial reach under all circumstances. Such a view is contrary to the consistent interpretation of the Committee on this subject, that, in special circumstances, persons may fall under the subject-matter jurisdiction of a State party even when outside that State's territory.

20. The Committee is concerned about conditions of detention of persons deprived of liberty in federal or state prisons, particularly with regard to planned measures which would lead to further overcrowding of detention centres. The Committee is also concerned at the practice which allows male prison officers access to women's detention centres and which has led to serious allegations of sexual abuse of women and the invasion of their privacy. The Committee is particularly concerned at the conditions of detention in certain maximum security prisons which are incompatible with article 10 of the Covenant and run counter to the Standard Minimum Rules for the Treatment of Prisoners and the Code of Conduct for Law Enforcement Officials.

21. The Committee is concerned that, in some States, non-therapeutic research may be conducted on minors or mentally-ill patients on the basis of surrogate consent, in violation of the provisions in article 7 of the Covenant.

22. The Committee is concerned at the serious infringement of private life in some States which classify as a criminal offence sexual relations between consenting adult partners of the same sex carried out in private, and the consequences thereof for their enjoyment of other human rights without discrimination.

23. The Committee is concerned about the impact which the current system of election of judges may, in a few States, have on the implementation of the rights provided under article 14 of the Covenant and welcomes the efforts of a number of States in the adoption of a selection system based on merit. It is also concerned about the fact that in many rural areas justice is administered by unqualified and untrained persons. The Committee also notes the lack of effective measures to ensure that indigent defendants in serious criminal proceedings, particularly in state courts, are represented by competent counsel.

24. The Committee welcomes the significant efforts made in ensuring to everyone the right to vote but is concerned at the considerable financial costs that adversely affect the right of persons to be candidates at elections.

25. The Committee is concerned that aboriginal rights of Native Americans may, in law, be extinguished by Congress. It is also concerned by the high incidence of poverty, sickness and alcoholism among Native Americans, notwithstanding some improvements achieved with the Self-Governance Demonstration Project.

26. The Committee notes with concern that information provided in the core document reveals that disproportionate numbers of Native Americans, African-Americans, Hispanics and single parent families headed by women live below the poverty line and that one in four children under 6 live in poverty. It is concerned that poverty and lack of access to education adversely affect persons belonging to these groups in their ability to enjoy rights under the Covenant on the basis of equality.

E. Suggestions and recommendations

27. The Committee recommends that the State party review its reservations, declarations and understandings with a view to withdrawing them, in particular reservations to article 6, paragraph 5, and article 7 of the Covenant.

28. The Committee hopes that the Government of the United States will consider becoming a party to the First Optional Protocol to the Covenant.

29. The Committee recommends that appropriate inter-federal and state institutional mechanisms be established for the review of existing and proposed legislation and other measures, with a view to achieving full implementation of the Covenant, including its reporting obligations.

30. The Committee emphasizes the need for the Government to increase its efforts to prevent and eliminate persisting discriminatory attitudes and prejudices against persons belonging to minority groups and women including, where appropriate, through the adoption of affirmative action. State legislation which is not yet in full compliance with the non-discrimination articles of the Covenant should be brought systematically into line with them as soon as possible.

31. The Committee urges the State party to revise the federal and state legislation with a view to restricting the number of offences carrying the death penalty strictly to the most serious crimes, in conformity with article 6 of the Covenant and with a view eventually to abolishing it. It exhorts the authorities to take appropriate steps to ensure that persons are not sentenced to death for crimes committed before they were 18. The Committee considers that the determination of methods of execution must take into account the prohibition against causing avoidable pain and recommends the State party to take all necessary steps to ensure respect of article 7 of the Covenant.

32. The Committee urges the State party to take all necessary measures to prevent any excessive use of force by the police; that rules and regulations

governing the use of weapons by the police and security forces be in full conformity with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; that any violations of those rules be systematically investigated in order to bring those found to have committed such acts before the courts; and that those found guilty be punished and the victims compensated. Regulations limiting the sale of firearms to the public should be extended and strengthened.

33. The Committee recommends that appropriate measures be adopted as soon as possible to ensure to excludable aliens the same guarantees of due process as are available to other aliens, and that guidelines be established which would place limits on the length of detention of persons who cannot be deported.

34. The Committee expresses the hope that measures will be adopted to bring the conditions of detention of persons deprived of liberty in federal or state prisons into full conformity with article 10 of the Covenant. Legislative, prosecutorial and judicial policy in sentencing must take into account the fact that overcrowding in prisons causes violation of article 10 of the Covenant. Existing legislation that allows male officers access to women's quarters should be amended so as to provide at least that they will always be accompanied by women officers. Conditions of detention in prisons, in particular in maximum security prisons, should be scrutinized with a view to guaranteeing that persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person, and implementing the Standard Minimum Rules for the Treatment of Prisoners and the Code of Conduct for Law Enforcement Officials therein. Appropriate measures should be adopted to provide speedy and effective remedies to compensate persons who have been subjected to unlawful or arbitrary arrest as provided in article 9, paragraph 5, of the Covenant.

35. The Committee recommends that further measures be taken to amend any federal or state regulation which allows, in some States, non-therapeutic research to be conducted on minors or mentally-ill patients on the basis of surrogate consent.

36. The Committee recommends that the current system in a few States of appointment of judges through elections be reconsidered with a view to its replacement by a system of appointment on merit by an independent body.

37. The Committee recommends that steps be taken to ensure that previously recognized aboriginal Native American rights cannot be extinguished. The Committee urges the Government to ensure that there is a full judicial review in respect of determinations of federal recognition of tribes. The Self-Governance Demonstration Project and similar programmes should be strengthened to continue to fight the high incidence of poverty, sickness and alcoholism among Native Americans.

38. The Committee expresses the hope that, when determining whether currently permitted affirmative action programmes for minorities and women should be withdrawn, the State party will bear in mind its obligation to provide rights guaranteed by the Covenant in fact as well as in law.

39. The Committee recommends that measures be taken to ensure greater public awareness of the provisions of the Covenant and that the legal profession as well as judicial and administrative authorities at federal and state levels be made familiar with those provisions in order to ensure their effective application.